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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-115
Telecommunications Act of 1996:	)	
	)	
Telecommunications Carriers' Use of	)	
Customer Proprietary Network Information	)	
and Other Customer Information	)	
	)	
Implementation of the Non-Accounting	)	CC Docket No. 96-149
Safeguards of Sections 271 and 272 of the	)	
Communications Act of 1934, as Amended	)	

REPLY OF VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits this, its reply to oppositions and comments on its petition for reconsideration and clarification of the Commission's *Order* in the above-referenced proceeding.[1/] As shown below, the Commission should grant the relief sought by Vanguard in its petition.

Vanguard sought reconsideration or clarification of the rules adopted in the *Order* in four specific areas. First, Vanguard showed that the Commission's rules must be modified to permit CMRS providers to jointly market service and equipment, along with certain types of information services, using CPNI. Second, the rules should be reconsidered or clarified to

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[1/] Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, *Second Report and Order and Further Notice of Proposed Rulemaking,* CC Docket Nos. 96-115 and 96-149, FCC 98-27, rel. Feb. 26, 1998 (the *"Order"*).

permit use of CPNI for customer retention activities, such as "win back" efforts and customer loyalty programs. Third, Vanguard sought clarification of the nature of the consent required for use of CPNI. Finally, Vanguard sought clarification of the extent to which CMRS providers are liable for the actions of sales agents. Vanguard also showed that Section 222 requires the Commission to undertake a service-by-service analysis of CPNI requirements, rather than adopting "one size fits all" rules.

Among the parties filing comments or oppositions, the overwhelming majority supports Vanguard's positions. Only a few oppose Vanguard's requests and, as shown below, those oppositions are based on a misunderstanding of the relief Vanguard is seeking or on a misreading of Section 222. Consequently, Vanguard's petition for reconsideration and clarification should be granted in its entirety.

I. The Rules Should Permit CMRS Providers to Use CPNI to Market Associated Equipment and Information Services Along with CMRS.

No party opposes permitting CMRS providers to use CPNI to market service together with associated equipment and information services. As Vanguard and a host of other CMRS providers demonstrated, CMRS equipment and information services typically are marketed in conjunction with the underlying telecommunications services.[2/] Moreover, equipment and

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[2/] Vanguard Petition at 9-10; *see also* Arch Comments at 4; AirTouch Comments at 10-11.

information services are an essential part of the package of services offered to customers.[3/] In fact, customer equipment must be programmed before it can be used with a particular CMRS provider and in some cases, such as the basic offering from Sprint PCS, it is impossible to purchase telecommunications service without an information service.[4/] Thus, the Commission should reconsider the prohibition on CMRS providers using CPNI to market customer equipment and information services without customer permission.[5/]

II. The Commission Should Ensure that Reasonable Customer Retention Activities Are Permitted.

There also was a substantial consensus that the Commission should modify the rules governing customer retention activities. In particular, the Commission should permit "win back" efforts and should clarify that customer loyalty programs are permissible.

[3/] Vanguard Petition at 9-10; *see also* AT&T Opposition at 6-7; Celpage Comments at 6.

[4/] Sprint PCS integrates an "answering machine" function into its basic service.

[5/] Vanguard does not take any position on the requests of incumbent local exchange carriers ("ILECs") for similar relief, but does note that local exchange customers typically obtain their customer premises equipment from vendors other than the local exchange carrier and that, similarly, information services typically are marketed separately from landline telephone services. These distinctions further support Vanguard's showing that Section 222 requires a separate analysis of the nature of each service and the customer expectations relating to that service. *See* Vanguard Petition at 4-7. Contrary to the suggestions of some ILECs, the use of the phrase "every telecommunications carrier" in Section 222(a) merely describes the scope of Section 222 and does not override the requirement under Section 222(c)(1) that analysis of use of CPNI be based on the specific requirements of each service. *See, e.g.*, BellSouth Comments at 14.

Many parties outlined the consumer benefits of win back activities in a competitive market. As these parties explained, win back activities enhance the ability of consumers to get the best deal possible from competing providers and are consistent with consumer expectations.[6/] Thus, win back efforts by competitive providers are consistent with the Congressional intent to balance customer privacy expectations and competitive requirements.[7/]

The only opposition to modifying the win back rule relates solely to win back efforts by ILECs.[8/] The parties that seek to retain the restrictions on ILEC win back raise competitive concerns that may apply in the context of an incumbent carrier that maintains market power. Those concerns do not apply, however, to competitive carriers, including CMRS providers that have operated in competitive markets since their services were authorized. Thus, while there may be grounds to retain the win back prohibition for ILECs, there are no such grounds for CMRS providers.

There was no opposition to Vanguard's request for clarification that customer loyalty programs are permissible. Indeed, as BellSouth explains, customer loyalty programs are not intended to market the goods or services offered to customers as rewards for loyalty, but "are

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[6/] *See, e.g.*, AT&T Opposition at 3-4; Sprint Opposition at 1-2.

[7/] *See* Telecommunications Act of 1996, Conference Report, 4 U.S. Code & Cong. News 219 (1996).

[8/] *See, e.g.*, ALTS Opposition; MCI Opposition at 2-7.

used to provide marketing incentives for the original purchase of services."[9/] Thus, they do not involve the use of CPNI to market goods or services outside the customer's existing service relationship with the provider. Consequently, the Commission should clarify that the CPNI rules do not affect customer loyalty programs.

III. The Commission Should Grant Vanguard's Request for Clarification Regarding the Nature of Customer Consent Required for Use of CPNI.

Vanguard is unaware of any party that opposed Vanguard's request for a simplified consent process in the context of initial customer agreements.[10/] As Vanguard described in its petition, there is a danger that lengthy disclosures will increase, rather than decrease, customer confusion. Consequently, Vanguard sought clarification that it would be permissible to provide a simple disclosure of customers' CPNI rights at or near the signature line on the customer agreement, with a reference to a more detailed disclosure elsewhere in the same document and an opportunity for the customer to choose whether or not to consent to the use of that customer's CPNI. This approach will increase the likelihood that a customer will make a conscious choice regarding disclosure of CPNI and will reduce the burdens of compliance for telecommunications providers. Thus, the Commission should issue the requested clarification.

[9/] BellSouth Comments at 9.

[10/] Vanguard Petition at 17-18.

IV. CMRS Providers Should Not Be Made Responsible for Actions of Sales Agents.

Only one party — MCI — opposes Vanguard's request for clarification regarding actions of sales agents. As shown below, Vanguard's request does not implicate the concerns raised by MCI and, therefore, should be granted.

Vanguard sought clarification that the Commission will not treat customer information obtained by sales agents in the course of their efforts to sign up prospective customers as CPNI.[11/] As Vanguard explained, sales agents are outside of the control of CMRS providers and often maintain independent records of their sales contacts. Moreover, sales agents are not themselves CMRS providers and therefore are not subject to Section 222.[12/] In fact, sales agents are not "agents" in the traditional sense of the term because they are unable to bind the CMRS provider and do not act in privity with the provider. Thus, there is no basis for applying the CPNI rules to the actions of independent CMRS sales agents.

MCI's concerns arise from the possibility that CMRS providers might share CPNI with their sales agents.[13/] MCI states that "[i]f a carrier shares CPNI with an agent, the carrier is bound by Section 222(a) and (c) to take all steps necessary to ensure that the agent does not misuse the CPNI."[14/] This is correct, and Vanguard does not seek to change this requirement;

[11/] Vanguard Petition at 18-19.

[12/] *Id.*

[13/] MCI Opposition at 55-56.

[14/] *Id.*

otherwise it would be possible for carriers to evade Section 222 with impunity. Rather, Vanguard seeks only clarification that information ***independently*** obtained by sales agents is not CPNI and that CMRS providers are not responsible for what sales agents do with that information. This clarification does not raise the concerns posited by MCI and, therefore, should be granted.

VII. Conclusion

For all these reasons, the Commission should reconsider and clarify the rules adopted in this proceeding in accordance with Vanguard's petition and this reply.

Respectfully submitted,

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July 6, 1998

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a secretary at Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 6th day of July, 1998, a copy of the foregoing "Reply of Vanguard Cellular Systems, Inc." was sent by first-class mail, postage prepaid, to the following:

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